

Introduction

A. How this Handbook Came About

The Russian Federation's shift from a centrally planned economy to a market-based economy has produced enormous challenges. New institutions and structures capable of supporting and regulating the new economic relationships have to be built to support Russia's nascent market-based economy. Among the key challenges is creating legal rules and building new legal institutions to protect new rights of private property and enterprise, as well as to protect the rights of both individuals and organizations in the process of economic exchange.

The changes in Russia's economy and Russia's vast economic potential have attracted many companies to business opportunities in the Russian Federation. The dramatic increase in business relations between foreign and Russian companies has been accompanied by a natural rise in the number of business-related disputes. Initially, the lack of familiarity with the dispute resolution fora available in the Russian Federation, concerns over differences in the legal systems, the evolutionary state of legal institutions, and fear of local bias all tended to lead foreign companies, including U.S. firms, to favor the use of arbitration tribunals in third countries for resolving business disputes with Russian parties.

As business relations have increased, however, the use of dispute resolution mechanisms within the Russian Federation has also increased. There are a number of reasons for this. The delays and inconveniences of using third country arbitration can be considerable. The substantial expense such processes entail may not be warranted for smaller contracts, smaller businesses, or limited disputes. Inability to meet such expenses has, in some cases, resulted in one party's failure to appear, complicating the consideration of the case and the enforcement of any resulting award. In addition, foreign businesses have become more involved in the Russian economy — not only contracting with Russian businesses but creating subsidiaries in the Russian Federation and investing in existing Russian companies. Exposure to an increased variety of potential disputes and legal concerns through the conduct of day-to-day business operations has resulted in significantly greater familiarity with domestic dispute resolution fora and the legal system as a whole.

One of the most important steps in the development of legal institutions supporting a market-based economy is the creation of effective dispute resolution mechanisms that can provide businesses, entering into contractual and commercial relations, with predictable enforcement of agreements. Also crucial is the existence of independent bodies that are able to interpret new laws authoritatively and apply them even-handedly, protecting the rights of organizations and individuals both in their dealings with one another, and with the bodies and agents of the state. In 1991, the state arbitrazh court system was created in the Russian Federation as a system of independent courts with jurisdiction over

commercial disputes involving organizations and registered individual entrepreneurs and over disputes between organizations or entrepreneurs and state bodies. These courts, functioning as of July 1, 1995, on the basis of the federal constitutional law “On Arbitrazh Courts in the Russian Federation,” hear thousands of cases each year. The arbitrazh courts are of fundamental importance in interpreting and developing the law in the area of commercial relations and have jurisdiction over most of the common types of commercial disputes, including those involving foreign parties.

In addition to the arbitrazh courts, other legal institutions also exist which may play a role in commercial dispute resolution. On the basis of party agreement, such disputes may be submitted to one of a number of arbitration tribunals, including the long standing International Commercial Arbitration Court in Moscow. While these tribunals have no mandatory jurisdiction, as do courts, and are not state bodies, some have significant experience in the consideration of commercial disputes with foreign party participation and some parties prefer to use these services. Also, the courts of general jurisdiction may have jurisdiction over many disputes in which individuals who are not entrepreneurs participate. There are some categories of cases, however, such as bankruptcy, in which all disputes are subject to the arbitrazh courts, whether or not the participants are organizations and entrepreneurs. In some commercial matters, the procurator (public prosecutor) may play a role, or specialized state bodies responsible for the enforcement of particular laws may be involved.

Despite increased use of the Russian domestic legal system by foreign parties, significant confusion persists among American and other foreign businesses and legal counsel about the domestic Russian mechanisms for the resolution of business disputes and the roles played by different bodies. The U.S. Department of Commerce, the U.S. Embassy in Moscow, and other officials advising businesses operating abroad regularly receive questions and requests for assistance about the functions and jurisdictions of different court and arbitration bodies, the roles of other bodies involved in dispute resolution, the procedures for using them, and the special issues that may need to be addressed.

Lack of such knowledge may lead to costly delays as cases are rejected by bodies unable to resolve them, and in some instances may cause businesses to make irreparable errors or omissions in the process of trying to resolve a dispute. Confusion over the structure and function of the dispute resolution bodies may discourage some businesses from pursuing opportunities, cause them to withdraw from a business arrangement rather than defend their rights and interests, or make it difficult for them to understand, assist and/or supervise their legal counsel. Faulty understanding of the roles of the different bodies and the nature of the procedures used may also lead to inappropriate expectations about processes and outcomes and to false perceptions of bias or undue influence when these expectations are not met. Thus, confusion may adversely affect both individual businesses and entrepreneurs and also the business environment as a whole.

Recognizing this, the U.S.-Russia Business Development Committee of the U.S.-Russian Joint Commission for Technological and Economic Cooperation has agreed that additional information should be made available to businesses on commercial dispute resolution in the Russian Federation. This Handbook is a product of cooperation between the U.S. Department of Commerce, the Supreme Arbitration Court of the Russian Federation, and the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation.

B. What this Handbook Covers

This Handbook relates only to mechanisms available for the resolution of business disputes within the Russian Federation. While business disputes involving Russian and foreign parties are also resolved in a variety of arbitration tribunals outside the Russian Federation, as well as in the domestic courts of other countries, detailed information on those courts and tribunals is generally available in the English language.

Some notes and remarks in the text call the reader's attention to differences between Russian and American institutions or procedures that are of particular importance in understanding the system or in avoiding problems, but the Handbook makes no attempt at a general comparison of the Russian institutions and their procedures with those outside the Russian Federation.

The Handbook is intended for a general audience, without extensive knowledge of, or experience in, the Russian legal system, but with a good general grasp of the institutions involved in business dispute resolution in the United States and/or other jurisdictions with mature market economies. It was envisioned that the Handbook would serve as a basic guide for businesses and practitioners, assisting them in better understanding the existing business dispute resolution mechanisms in the Russian Federation. The Handbook is intended to clarify and explain, in general terms:

- what options for resolution of commercial and commercially related disputes exist within the Russian Federation;
- what bodies may be involved in the dispute resolution process, their roles and jurisdictions;
- where a claim can be filed and what information will need to be submitted;
- the process for consideration of disputes; and
- the process for the enforcement of judgments.

The Handbook discusses the resolution of disputes by the courts through formal judicial proceedings, as well as the roles of non-judicial bodies, including arbitration tribunals, some executive bodies, and others that may play a role in dispute resolution or

in execution of judgments, such as the procurator and the bailiffs service. While these bodies have more limited and specialized roles than the courts, it is important to be acquainted with them and to understand their functions.

The Handbook concentrates on the way the system operates now and the laws in force at the time of its writing. The Russian legal system is, however, still in the process of change. Some of the bodies (both old and new) have undergone several major changes in their structure and authorities within the past decade, as concepts of the proper directions for reform have changed. Work continues on implementing needed changes in the judicial system, enacting pieces of legislation to comply with the new Russian Constitution (adopted in 1993), elimination of gaps in the laws, and correction of problems observed in the use and application of recently created institutions and procedures. Significant change is expected in the near future related to the courts of general jurisdiction and to civil procedure legislation governing civil cases in those courts. The legislation on the arbitrazh courts, which are the focus of special attention in the Handbook, is not expected to undergo any fundamental change, although a new procedural code for those courts is currently in the early stages of the legislative process.

The continuing development of the law and the expectation of change in a number of areas means that the reader must remain aware of developments occurring after the date of publication. The Handbook notes the contents or trends in development of draft legislation where this information is available at the time of writing. If you are using this Handbook to help you make decisions and talk to your legal counsel, make sure that you ask counsel about the impending changes noted in sections that are relevant to your dispute and about any other changes that affect your options.

The recent date of some changes may mean that the precise details of new jurisdictional boundaries and newly redefined authorities are still being worked out in practice. Different bodies may disagree about their relative authorities, jurisdictions, and proper procedures, as practices and methods of operation under older rules and structures change or are modified. The remedy, and sometimes the prevention, for many of these “transitional” difficulties, as well as for other types of irregularities in the application of the laws, is for a participant in a commercial dispute to be well-informed about the authorities and procedures defined by legislation currently in effect. Care should be taken in assuming that the interpretation given to new rules and procedures by the bodies operating under and enforcing new legislation is authoritative or well-settled. The possibility of mistake or confusion should be considered, particularly if one is confronted with an action, a demand, or a result that appears to be clearly in conflict with new rules.

It must be emphasized that this Handbook is not intended as legal advice concerning any specific dispute. Moreover, the Handbook does not suggest or recommend that commercial claims be pursued without the assistance of qualified counsel who know and can explain the substantive law governing a particular dispute and the special procedural rules which may apply. It is hoped that the Handbook will enable the reader to better understand the advice and concerns of local counsel, to ask good questions, and to assist in the dispute resolution process, but it certainly is not a substitute for legal advice.

C. Organization of the Handbook

This Handbook is divided into five chapters. Chapter 1 provides general information on the bodies that play a role in dispute resolution in the Russian Federation, including courts, arbitration tribunals, the public prosecutor, and specialized law enforcement bodies. Chapter 2 provides more detailed information on courts and arbitration tribunals — the bodies to which disputes are generally submitted — and the current jurisdiction and authority of each.

Chapter 3 of the Handbook discusses procedures for the resolution of business disputes by the arbitrazh courts, and Chapter 4 the appeals process in the arbitrazh courts. The majority of commercial disputes, including those involving foreign parties, are within the jurisdiction of these courts. Although there are still some important exceptions to this rule (discussed in Chapter 2 of the Handbook), there is a clear legislative trend toward their elimination. Thus, the arbitrazh courts are increasingly likely to be the forum with jurisdiction over commercial disputes of interest to readers. Taking this into account, as well as the extremely limited availability of English language information on arbitrazh court procedures, these courts are the focus of the procedural sections of the Handbook.

This focus on the arbitrazh courts is not intended to indicate that arbitration tribunals and their procedures are not important, nor to suggest that the arbitrazh courts, and not arbitration tribunals, should be used to resolve particular business disputes. Use of arbitration tribunals in the Russian Federation, particularly the long-established international arbitration tribunal functioning under the Chamber of Commerce and Industry, has increased significantly with increased business activity. The multiplication of arbitration tribunals in recent years, however, makes a complete discussion of all of their rules and procedures beyond the scope of this Handbook.

The final chapter of the Handbook — Chapter 5 — covers the procedures for the enforcement of judgments. It should be noted that although the dispute resolution procedures for various specific arbitration tribunals are not discussed in the Handbook, Chapter 5's discussion of enforcement proceedings covers the enforcement of both court decisions and arbitral awards.

D. Language and Usage of Terms in the Handbook

A number of questions of language use and of translation may arise in relation to various parts of this Handbook. In part, this is due to the general subject matter rather than to differences in languages or structures of legal systems. The subject of law in any language uses a set of “terms of art” or common references that relate to the stages of legal process and fundamental legal principles. With respect to English language terms and expressions, an attempt has been made to avoid the use of extremely specialized terminology. Where less common terms are used, a definition or explanation is provided at the first usage, but is not repeated throughout the text.

In general, the Handbook avoids the use of English language terms which are not very near equivalents of the Russian. Thus, the Handbook refers to “arbitrazh courts” rather than “economic courts” and to the “procuracy” rather than the “prosecutor.” *The Handbook also avoids the use of the term “arbitration court” for the arbitrazh courts, since this erroneously suggests that these bodies are arbitral tribunals rather than courts. The reader should note, however, that the term “arbitration court” is used frequently in English, and by the arbitrazh courts themselves, to mean the arbitrazh courts.* These institutions, and others discussed in the Handbook, are described in detail when introduced in Chapter 1.

Attempts have been made to preserve important distinctions in terms, even where this may make the language of the Handbook somewhat more complex. For example, the Handbook distinguishes between three types of appeal of court decisions — appeal of a first instance decision, “cassational” appeal, and petition for supervisory review. These differing types of appeal have no precise equivalents in Anglo-American legal systems, and the use of English language terminology would blunt or eliminate important distinctions. Each of the types of appeal and the corresponding review of the decision are discussed in detail in Chapter 4 of the Handbook.

Where the distinction is not important to the topic being discussed in the Handbook or the English term is sufficiently close, the Handbook uses the English term. In some instances, there are several English terms that are used by different authors or translators for a single Russian term. For example, the names of some of the constituent parts of the Russian Federation (krais and oblasts) are commonly translated in a number of ways (territories and regions, regions and districts, and other combinations). The Handbook uses the terms “territories” and “regions” for krais and oblasts. It does not, however, give the Russian equivalents for the English terms chosen, or discuss alternate terms except in the few cases in which a reader of both languages might be confused about the reference.

While the Handbook is designed as a basic, informational guide, suitable for use by a general audience of business and legal professionals, it does, however, assume a good degree of familiarity with basic legal terms and concepts related to the process of conducting a law suit. Like any resource guide, it is hoped that this Handbook will provide a better understanding of the existing business dispute resolutions mechanisms in the Russian Federation and the advice and concerns of the legal counsel.

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Chapter 1. Overview of Bodies Involved in Dispute Resolution

In most legal systems, there are a number of bodies and institutions that may play a role in dispute resolution. Courts usually play the anchoring role, but other bodies, including the prosecutor, state administrators, and facilities for arbitration and/or mediation may also be involved. Of course, every institution does not get involved in every dispute. In understanding your options, and anticipating possible developments, it is important to know what bodies and officials exist and what their roles are in the legal system and in the dispute resolution process. This chapter provides an overview of the different institutions and their functions. Chapter 2 will examine more closely the jurisdictions and limits of authority of the main bodies in the system - the courts and arbitration tribunals.

A. Arbitrazh Courts

1. What is an “Arbitrazh Court” and Does it Conduct Arbitration?

There is a common confusion among those not familiar with the Russian legal system about the nature and function of the system of arbitrazh courts and their relationship to other bodies which have the adjective “arbitrazhnyi” or even the term “arbitrazh court” in their titles. This confusion is quite understandable, since the adjective “arbitrazh” and the term “arbitrazh court” are used in Russian to refer to two different kinds of bodies, and English translation often fails to distinguish between them. The “arbitrazh courts” in the Russian Federation are a system of courts which have jurisdiction over most commercial disputes and many other cases involving business entities. These are not arbitration tribunals and they do not conduct arbitration - they are courts in the general sense of the word. They operate according to federal laws concerning their structure and procedures and they are staffed by full-time judges who are paid by the state and appointed through a formal procedure of nomination and approval by federal bodies.

As a general matter, classical arbitration is referred to by the Russian term “treteiskii sud” or “third-party court.” However, the confusion of terms and functions is made more difficult by the fact that there are some instances in which the adjective “arbitrazh” is used to refer to arbitration rather than to the arbitrazh courts. In particular, the two oldest arbitration facilities in the Russian Federation — the Maritime Arbitration Commission and the International Commercial Arbitration Court — use the adjective “arbitrazhnyi” in their titles, with the second body using the term “arbitrazh court,” although both of these bodies conduct a traditional form of arbitration. In addition, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is rendered in Russian using the term “arbitrazh decisions” rather than the term “treteiskii sud,” and there are other instances of the use of the word “arbitrazh” alone, or the term “arbitrazh court,” to refer to arbitration tribunals, especially foreign arbitration tribunals